

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

CONOCO PHILLIPS ALASKA, INC.¹

Employer

And

Case 19-RC-14445

PAPER, ALLIED INDUSTRIAL, CHEMICAL AND
ENERGY WORKERS INTERNATIONAL UNION
LOCAL 8-0369

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record² in this proceeding, the undersigned makes the following findings and conclusions.³

SUMMARY

The Employer is a State of Delaware corporation engaged in the business of oil and gas exploration and production, with an office located in Anchorage, Alaska. The Employer has operations on several oil fields in Alaska, including the Greater Kuparuk area of the North Slope ("Kuparuk"), the only location at issue in this proceeding. The Petitioner filed the instant petition on August 28, 2003,⁴ and seeks to represent all production operators and maintenance employees employed by the Employer at Kuparuk, excluding all office clerical employees, managerial employees, professional employees, guards, and supervisors as defined in the Act. The parties disagree whether certain lead operators are properly included in the unit. The Employer contends that I should exclude the plant lead operators, drill site lead operators, STP (Seawater Treatment Plant) lead operators, and the camp utility lead operators from the unit solely because they are supervisors under Section 2(11) of the Act. On the other hand, the Petitioner contends that none of them are supervisors, but are employees who are properly included in the unit.

Based on the record evidence and the arguments presented by the parties, I conclude that the Employer has met its burden of proving that the disputed classifications are supervisors under the Act. Accordingly, I shall exclude the plant lead operators, drill site lead operators, STP lead operators, and the camp utility lead operators from the unit sought by the Petitioner.

Below, I have provided a section setting forth the facts, as revealed by the record in this matter and relating to background information about the Employer's operations and the duties and

¹ The Employer's name appears as corrected at the hearing.

² Both parties filed timely briefs, which were duly considered.

³ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved herein claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁴ All dates are in 2003 unless otherwise indicated.

responsibilities of the plant lead and drill site lead operators that bear on their supervisory status.⁵ Following the facts section is a restatement of the parties' positions, my analysis of the applicable legal standards in this case, a section directing an election, and a section setting forth the right to request review of my Decision and Direction of Election.

A.) FACTS

1.) The Employer's Operations at Kuparuk

The Employer has oil and gas exploration and production operations located at Kuparuk and Alpine Oil Fields on the North Slope of Alaska, and at oil fields located at Cook Inlet in Alaska. The unit sought and the disputed classifications concern employees solely at the Employer's Kuparuk location. The Kuparuk operation is divided into three central processing facilities ("CPFs"), which are referred to as CPF-1, CPF-2, and CPF-3. All three CPFs perform the same function and contain the same equipment, except that CPF-3 does not have all of the equipment found in the other two CPFs. Each CPF has approximately 12 to 20 associated drill sites from which the oil and other fluids are extracted and then flow into the CPF. A drill site is a gravel pad, a collection of wells, and a piping manifold that collects the production from each well. After the extracted fluids are sent to the CPF, gas and water are separated from the oil, the oil is prepared for shipment down the Trans-Alaska pipeline, and the gas and water are prepared for re-injection back into the oil reservoir. Also included in the Employer's Kuparuk operation is the Seawater Treatment Plant ("STP"), which is located by the Beaufort Sea about 8 to 10 miles north of CPF-3. Seawater is processed at the STP for re-injection into the oil reservoir. The Kuparuk Operations Center, which is located near CPF-1, is where employees sleep and eat while working at Kuparuk.

The Employer's Kuparuk operation runs 24 hours per day, 7 days a week. Employees generally work for 7 days and then receive one week off, but the Employer can also schedule them to work 14 days on, and 14 days off work. There is a day shift that starts at 6 a.m. and ends at 6 p.m., and the night shift runs from 6 p.m. to 6 a.m. One field manager and three subordinate operations managers oversee the Employer's Kuparuk operations. Two production supervisors are assigned to each CPF and they are the individuals to whom the plant lead, drill site lead, and STP lead operators report. The camp utility lead operators report to the two camps and materials supervisors.⁶

Several oil companies have operated the Kuparuk oil field in the last two decades. ARCO operated the field during the 1980's and 1990's until British Petroleum purchased it around the year 2000. British Petroleum subsequently sold some of its assets, including Kuparuk, to Phillips. When Conoco and Phillips merged to form the Employer within the year preceding the hearing, the Employer began operating Kuparuk. The Employer's predecessors eliminated a number of foremen

⁵ The parties presented evidence primarily about the duties of the plant lead and drillsite lead operators, and virtually none concerning the duties of the STP lead and camp utilities lead operators. However, the parties stipulated that the STP lead and camp utilities lead operators perform functionally the same duties bearing on supervisory status as the plant lead and drillsite lead operators, and that whatever decision I reach concerning the supervisory status of the plant lead and drillsite lead operators is equally applicable to the STP lead and camp utilities lead operators.

⁶ In addition to the field manager, subordinate operations managers, production supervisors, and the camps and materials supervisors, the parties have stipulated that the following classifications should be excluded from the unit as supervisors, or managerial employees, or because they do not share a sufficient community of interest with the unit employees: aides, production aides, facility engineers, production engineer supervisor, engineers (production), technician, central maintenance supervisors, engineers (maintenance), PM/MEL specialists, CMMS specialist, materials specialists, engineer/corrosion supervisors, engineers, technicians, field service supervisor, and fleet analyst. The parties also stipulated that the following classifications are properly included in the unit: plant operators, drill site operators, seawater treatment plant operators, camp utilities operators, maintenance technicians, lead maintenance technicians, instrument technicians, lead instrument technicians, electrical technicians, lead electrical technicians, mechanical technicians, lead mechanical technicians, and network service technicians. In view of the above, I will exclude or include those positions, set forth above, in line with the parties' stipulations.

positions in the early 1990's and several supervisory positions in the late 1990's in order to reduce costs. The lead operator positions at issue were created in the early 1990's.⁷

2.) Duties and Responsibilities of the Plant Lead and Drillsite Lead Operators⁸

The lead operators oversee the work of the operators and also perform operator work. Generally, the operators are responsible for monitoring equipment to insure that certain indicators such as oil flow, pressure, and temperature remain within allowable parameters. They perform these duties by viewing computers, gauges, relaying information to other operators, and by recording the information on various documents. They also prepare equipment for maintenance when necessary.

With respect to work areas, the operators typically remain at one CPF, but rotate between plant and drill sites. Drill site operators work at the drill sites while the drill site lead operators have an office at the CPF, which is where they tend to stay. The plant lead operators also have an office at the CPF, but spend a considerable amount of their time roving around the plant. The plant operators do not have an office and tend to stay in the area of the plant where they are assigned.

Estimates of the amount of time that the lead operators spend performing lead work, as opposed to operator work, vary considerably in the record. The production supervisor, at CPF-1 and the Employer's sole witness at the hearing in this case, testified that plant leads spend less than 50% of their time performing operator work during the day shift, while they spend slightly more than 50% of their time performing operator work during the night shift. He further testified that drill site leads at CPF-1 and 2 do not perform any operator work during the day shift, and spend about 25% of their time performing operator work on the night shift. He further estimated that plant leads and drill site leads at CPF-3 spend roughly 50% of their time performing operator duties on both the day and night shifts. On the other hand, the plant lead, at CPF-1 and the Union's sole witness at the hearing, testified that he spends about 90% of his time performing operator duties while working on the day shift, and more than that while working on the night shift. He later testified, however, that he spends an average of 60% of his time outside of his assigned operator area.

On the day shift, there is typically one plant lead and five plant operators working at each CPF, and one drill site lead and four drill site operators. There is one plant lead and three plant operators working on the night shift typically at each CPF, and one drill site lead and one or two drill site operators working on the night shift. Production supervisors do not work on the night shift. Thus, the plant and drill site leads are the highest authority present during the night shift, though the Employer did not present any evidence concerning what supervisory functions, if any, that these leads perform on the night shift that they do not perform during the day shift.

a.) Hiring Authority

The Employer presented evidence showing that the plant and drill site leads and the production supervisors participate in the hiring process as a team.⁹ Both the leads and production supervisors have developed hiring criteria, which are applied for the purpose of screening out applicants who fail to meet the requisite criteria. Following this screening process, both the leads and the production supervisors interview the applicants, sometimes together and sometimes separately. The leads fill out evaluation forms after the interviews in which they rate the candidates

⁷ The Employer did not explain why its predecessor created lead positions at the same time that it was eliminating foremen positions to reduce costs.

⁸ The plant lead and drill site lead operators hereafter will be referred to collectively as the lead operators or the leads.

⁹ The record evidence reveals that the production supervisors play a role in determining whether additional hiring is warranted in the first place. However, the Employer did not elaborate on the role of upper level management in such determinations particularly in view of the undisputed fact that final authority for hiring rests with higher-level management.

on a number of pre-determined criteria and include additional written comments. They also fill out a section on the form calling for a recommendation on whether the applicant should be hired and calling for an indication as to the how strongly one feels about that recommendation. The production supervisor at CPF-1 testified that production supervisors typically follow the recommendations of the leads concerning whether to extend an offer of employment. This was particularly true where the team members reached a consensus. Where the team members did not reach a consensus, the production supervisor speaks to them and attempts to get a consensus view. If he fails to obtain a consensus, or the team members cannot decide which candidate is the best, the production supervisor makes the decision based on his further review of the applications and resumes, as well as on input from the leads. His determination in those instances becomes the team's final recommendation. Regardless of how the team's ultimate recommendation is reached, it is communicated to the field manager or operations manager, who retains the final authority to hire a candidate. The record is conflicting and inconclusive as to whether the field or operations managers conduct any further review or investigation of the candidates recommended.

Concerning internal hires (i.e., transfers), the production supervisor testified that the production supervisors accept the leads' recommendations with the same regularity that they do with respect to external hire candidates. He acknowledged, however, that compelling company issues could outweigh the recommendations of the leads and production supervisors concerning whether to transfer an employee. The record reveals that despite three leads recommending against the transfer of an employee, the Employer nonetheless transferred the individual.

b.) Authority to Lay Off Employees

The production supervisor testified that he was aware of one layoff at Kugaruk involving hourly employees. The layoff occurred about one year prior to the hearing when the Employer's management decided that six employees would be laid off to reduce costs. The production supervisors asked the leads for recommendations concerning which employees to lay off based on inferior performance. The leads at CPF-1 informed their respective production supervisor(s) that they were in agreement that there were not any poor performers there compared to CPF-2 and 3. The leads further informed their supervisors that they could not reach agreement on which personnel to lay off at CPF-1 but offered names, nonetheless, should management decide to lay off anyone from there. The production supervisor at CPF-1 agreed with the leads' recommendation not to lay off anyone from CPF-1. Leads at CPF-2 and 3 made recommendations concerning which personnel to lay off there. The management team comprised of the production supervisors, field manager, and operations manager, ultimately decided not to lay off anyone from CPF-1, and to lay off some operators from CPF-2 and 3. The production supervisor at CPF-1 testified that he "believed" that the leads' layoff recommendations for CPF-2 and 3 were followed. He did not present any evidence concerning what review process, if any, the management team followed in considering the leads' layoff recommendations, and the record does not contain any other evidence on that point.

c.) Authority to Evaluate Employees for Promotion

Operators at Kugaruk are compensated on the basis of a progressive pay scale. In order to advance to the next pay level, an operator must pass field and written tests known as PEAK tests.¹⁰ The leads conduct the field tests and administer and evaluate the written tests. The written tests, which are available on the Employer's computer system, involve information that is drawn from standard operating procedures and safety policies, as well as basic information such as the warehouse cost of materials used at the Employer's operation. Operators taking the tests write lengthy essay-like answers, rather than selecting multiple-choice answers. The leads alone

¹⁰ Advancement also depends on time as operators usually must wait a year in a pay grade before they can take the next test, but that one-year requirement can be waived by the Peak Review Board, which consists of production supervisors and upper level management.

determine whether the operators pass the tests. In making that determination, the leads do not receive any criteria from management as to how to grade the test and there is not any established passing grade. The leads, however, must be familiar with the safety processes and standard operating procedures in order to evaluate whether the operator taking the test has provided correct answers to the questions. If the leads are dissatisfied with the answers, they can return the test to the operators with suggested areas for the tester to study before retaking the test.

Once the leads have determined to their satisfaction that the operator has provided correct answers on the written test, they sign off on the test and send it to the production supervisors. The production supervisors review the test and arrange for the successful tester's promotion to the next pay grade. The type of review that occurs by the production supervisor after the leads have signed off on the test appears to vary by supervisor. The production supervisor at CPF-1 testified that while he reviews selective answers on the test, he has never overruled the lead's determination that an operator has passed and that it is not his practice to question the lead's judgment on this matter. The plant lead operator at CPF-1 testified that some production supervisors merely accept the test the way that they receive it from the lead, while other production supervisors review the signed-off tests carefully and find mistakes. However, he did not provide any evidence, and the record does not otherwise contain any evidence, concerning what would happen to an employee's promotion if the production supervisor found mistakes on the signed-off test.

Any employee can suggest revisions to the PEAK test but cannot unilaterally revise the test. The record reveals that a plant lead performed the most recent revision to the PEAK plant test with input from other plant leads, and very little input from the production supervisor. The leads at a CPF can approve the revisions to the plant PEAK test that is applicable to that CPF. By contrast, revisions to the field-wide PEAK tests at the drill sites require review and approval by the production supervisors.

d.) Authority to Assign Work and Responsibly Direct Employees

The daily production work that is performed at the Employer's Kuparuk operation results from a combination of decisions made by production supervisors and the leads. The production supervisor is responsible for setting the staffing level for the number of operators to perform the work at the CPFs and the drill sites. On a weekly basis, the plant leads and drill site leads are responsible for the assignment of work to operators at the CPFs and drill sites, respectively. After they decide how to allocate the personnel between the CPFs and the drill sites, the leads decide which operators will work in different areas and whether they will work on the day or night shift. When making assignments, the leads take into account work priorities, asset integrity, safety, and production. The production supervisor at CPF-1 testified, however, that the assignment of a particular operator very often boiled down to which operator had been previously assigned to an area. The assignment of an operator to an area primarily determines the tasks that the operator will perform for the week because there are set tasks associated with each area. The leads also assign work to employees other than operators, such as maintenance personnel and/or third party contractors. Neither the production supervisors nor anyone else in management must review or approve the leads' work assignments to operators or other personnel.

Assignment of operators is governed to some degree by factors outside of the leads' control. For instance, assignment must be made only to operators scheduled to work that week. When making their assignments, the leads know who is scheduled to work because they have received a list of scheduled employees that the production aide has produced. The leads do not have the authority to call in an operator who is not scheduled to work, though they can solicit volunteers to work overtime.¹¹ The leads also know which operators are certified or otherwise qualified to work in

¹¹ The lead's role in overtime will be discussed in detail below.

certain areas when they make their assignments. They also know which shifts the operators prefer to work.

Work priorities that leads take into account when assigning work are usually established at early morning “tailgate” meetings, which are run by the leads. Leads set work priorities based on input received from operators and maintenance personnel, as well as work priorities established by production supervisors and upper management that have been communicated to the leads. The production supervisor at CPF-1 testified that the priorities established by management were somewhat less than 25% of the daily work priorities. Production supervisors have the authority to revise priorities set by the leads by upgrading or downgrading them, or even eliminating them. The plant lead at CPF-1 testified that when he arrives at the morning tailgate meeting, he also assesses whether anything has gone wrong on the preceding night shift that requires immediate work that day.

Established priorities can also be altered by work orders, which is the process to obtain manpower and resources to fix a problem. An operator or maintenance person will communicate a notification of problem (proposed work order) to the leads, who have the authority to determine whether the work needs to be done and to approve a work order if, in their judgment, the cost will not exceed \$25,000. If the proposed work will cost more than \$25,000, the production supervisor must approve the work order. Once the work order is approved, it becomes a direction to personnel and/or to third party contractors to perform the work. Unanticipated problems that develop can also cause a lead to revise work priorities.

As employees at Kuparuk regularly work 12-hour shifts, they earn overtime pay once they exceed 40 hours in the week. The production supervisor at CPF-1 testified that, on an average of a couple of times per week, leads assign operators to work more than 12 hours per day. Without consulting a production supervisor, the leads have the authority to decide whether this additional overtime will be worked. In making this determination, the leads must assess whether the Employer’s interests (such as production and safety) warrant incurring the additional cost of overtime, or whether the work can wait until the next shift. The record discloses that the leads are called upon to make these determinations on the average of a couple of times per week. In determining which personnel to offer this overtime, the leads must follow a process that offers the overtime first to the individuals (including leads) who have had the least offered to them during the prior year. The leads cannot compel anyone to work overtime. Production supervisors have not overturned such overtime determinations. Additionally, leads have the authority to decide that, due to a manpower shortage, operators need to work a three-week-on, one-week-off schedule. Leads may also decide that they need to solicit operators to return early from their scheduled break or delay their scheduled break to address a manpower shortage.

While leads provide direction to the operators in the performance of their tasks, other operators do as well. Leads’ directions include informing operators of the Employer’s operating procedures and insuring compliance with those procedures. Leads also engage in troubleshooting whereby the lead assists the operator in figuring out and correcting a problem with their gauges or other equipment. When directing the operators, leads also communicate work priorities and concerns for safety, cost, and production needs in an effort to guide the operators in performing their duties.

e.) Secondary Indicia of Supervisory Status

The Employer pays leads at a rate that is 10% higher than the regular rate of the highest paid operator. Leads also have offices while operators do not. As production supervisors do not work on the night shift, the leads are the highest authority present during that shift when operators and maintenance employees are working. Leads have also regularly filled in for production supervisors when the latter are absent for periods of time, although the record does not reveal any

occasion when operators have similarly filled in for the production supervisors. As noted above, the leads have the authority to authorize up to \$25,000 of the Employer's funds when they approve a work order to fix a problem. The exercise of that authority is not subject to review by upper management.

On the other hand, leads and operators are both hourly paid and entitled to overtime, while the production supervisors receive a salary and may not earn overtime. Leads must also submit their timecards to the production supervisors for approval, and also perform regular operator duties, in some cases, for about 50% of their day. Finally, the plant lead testified that he did not consider himself to be a supervisor.

B.) POSITIONS OF THE PARTIES

The Employer contends that the lead operators are supervisors as that term is defined by Section 2(11) of the Act. In support of that contention, the Employer argues that the lead operators make effective recommendations concerning the hiring, layoff, and promotion of employees, and use independent judgment in responsibly assigning and directing employees in their daily work. Contrary to the Employer, the Petitioner asserts that the lead operators are not statutory supervisors, but are employees properly included in the unit. In support of its claim, the Petitioner argues that the lead operators do not make effective recommendations because they are independently reviewed by the production supervisors, who are admitted statutory supervisors, and that the leads' assignment and direction of employees is routine and does not involve the application of independent judgment.

C.) ANALYSIS

Section 2(11) of the Act defines "supervisor" as follows:

[A]uthority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be interpreted "in the disjunctive, and the 'possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class.'" *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000) (quoting *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949)). In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are imbued with "genuine management prerogatives," and "straw bosses, leadmen, and set-up men, and other minor supervisory employees." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-281 (1974) (quoting S. Rep. No. 105, 80th Cong., 1st Sess., at 4 (1947)). Individuals who are given such management authority are denied organizational rights because, in Congress' judgment, they should have an undivided loyalty to management interests when they exercise independent judgment with respect to personnel matters or the responsible direction of work. *Bell Aerospace*, 416 U.S. at 279-283; *Florida Power & Light Co. v. Elec. Workers, Local 641*, 417 U.S. 790, 807-813 (1974). On the other hand, the Board has a duty not to construe Section 2(11) "too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985), aff'd. In relevant part, 794 F.2d 527 (9th Cir. 1986). The burden of establishing supervisory status rests with the party asserting its existence. *Bennett Industries*, 313 NLRB 1363 (1994). Accord *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711 (2001).

Initially, I find that the leads are statutory supervisors because they effectively recommend pay increases for operators through their evaluations of operators' PEAK test performance.

Although Section 2(11) does not include the authority “to evaluate,” the Board finds that individuals who perform evaluations are supervisors where there is a direct correlation between the evaluations performed and the conferral of merit increases or bonuses to the person evaluated. See, e.g., *Harbor City Volunteer Ambulance Squad, Inc.*, 318 NLRB 764 (1995); *Bayou Manor Health Center*, 311 NLRB 955 (1993).

As the above facts establish, the operators’ pay increases are directly dependent on leads’ approval of their PEAK tests. Without such approval, operators are unable to qualify for the increases. The leads alone administer the tests and alone determine whether the operators pass the PEAK tests. Although the Petitioner contends that the leads do not exercise independent judgment in evaluating these tests because the written questions and answers are based on operating procedures, safety policies, and basic information, I disagree. The leads’ function in evaluating the operators’ performance on the tests is not merely to determine whether the operator has selected the correct predetermined answer on the test. Rather, the leads are required to exercise independent judgment in evaluating whether the written essay answer reveals that the operator understands, applies and clearly communicates the information sought by each essay question.¹²

The record evidence also demonstrates that there is a direct correlation between the leads’ evaluation and approval of the test results and the subsequent conferral of the pay increases. Although the approved test is sent to the production supervisor to obtain approval of the pay increase, the evidence does not show that the production supervisor conducts an independent review or evaluation of the leads’ approval of the test. Indeed, the CPF-1 production supervisor testified that while he looks at some of the approved test, he never questions the leads’ judgment. While the plant lead at CPF-1 testified that some production supervisors correct mistakes in the approved tests, there is no record evidence suggesting that these supervisors review or overrule the leads’ evaluation, or otherwise deny the pay increases that result from the approved tests. In these circumstances, the leads’ evaluation and approval of PEAK tests effectively cause the operators’ pay increases and, therefore, establish supervisory status. See, e.g., *Trevilla of Golden Valley*, 330 NLRB 1377 (2000) (LPNs found to be supervisors where they issue evaluations, which are directly linked to merit pay increases, without prior approval of admitted supervisors, even though higher authority has occasionally modified evaluations on review without affecting the recommended change in pay); *Hillhaven Kona Healthcare Center*, 323 NLRB 1171 (1997) (individuals found to be supervisors where their evaluations result in wage increases even though an admitted supervisor must sign the evaluation and management must sign the form before the increase is effectuated). See also *Harbor City Volunteer Ambulance Squad*, 318 NLRB 764 (1995) (individuals found to be supervisors where their evaluations lead to automatic wage increase for evaluated employees and where the record does not establish that admitted statutory supervisors ever unilaterally change a rating or retain ultimate authority over evaluations).

Contrary to the Petitioner’s contention, I do not find that *Children’s Farm Home*, 324 NLRB 61 (1997), requires a different conclusion. In that case, the Board found that the evaluations, which were performed by the alleged supervisors and which recommended wage increases, were “merely advisory and preliminary” because the record established that higher level statutory supervisors had final authority with respect to evaluations and conducted their own independent investigations to determine if merit increases were warranted. Unlike that case, the record here does not establish that the production supervisors, or any other admitted statutory supervisors, retain ultimate authority concerning the PEAK test evaluations or conduct independent investigations to determine whether the operators should receive a pay increase.

¹² As I have concluded that the leads exercise independent judgment in evaluating the operators’ performance on the PEAK tests, I find that the Petitioner’s reliance on *Dynamic Science*, 334 NLRB No. 57 (June 27, 2001), to be misplaced.

The record also demonstrates that the leads assign work by exercising independent judgment. Significantly, leads make the determination whether to authorize overtime to complete work. In making that determination, the lead must balance the cost of the overtime to the Employer against the Employer's interest in getting the work done immediately based on production and safety priorities. The lead's judgment to assign the overtime work is never overturned by higher management. Finally, the leads' exercise of this authority concerning overtime is regular, as the record discloses that the leads are called upon to make these determinations on the average of a couple of times per week. Compare *Quadrex Environmental Co.*, 308 NLRB 101 (1992) (leads are not supervisors where management normally makes decisions to grant overtime and leads' emergency authorization of overtime without prior approval occurs without any regularity).¹³

The leads' authority to approve work orders, which require the assignment of work to personnel in the proposed unit and/or to third party contractors, is further evidence of supervisory authority. Although the Petitioner argues that the exercise of that authority is routine because the Employer has established a \$25,000 limit governing that authority, the argument is not convincing. The Petitioner ignores the fact that the lead must use independent judgment to decide initially whether to approve the request, which commits the Employer's funds to obtain resources and/or personnel to fix the problem. Only if the lead approves the request is a work order generated and a work assignment made. The lead's determination is not subject to review, except when approval of the request will cost more than \$25,000.

I further note that the leads make work assignments based, in part, on work priorities that they establish each morning at the "tailgate" meeting. As the plant lead acknowledged in his testimony, leads have to reassess work priorities each morning by determining whether anything critical had gone wrong the prior evening that would require immediate work. Although it is true that leads may receive almost 25% of their work priorities from upper level management, I disagree with the Petitioner's contention that leads merely communicate management's priorities rather than setting work priorities themselves. As the leads make daily assignments to operators and others based on their assessments of work priorities, I find that they assign work by exercising independent judgment within the meaning of Section 2(11). See *Arlington Masonry Supply*, 399 NLRB No. 99, slip op. at 2 (July 21, 2003) (individual is supervisor where he prioritizes all maintenance work that needs performing and makes daily assignments to perform that work).

As I have determined that the leads possess primary indicia of supervisory status that are enumerated in Section 2(11), I may consider and find that several secondary indicia also support my conclusion that leads are supervisors. See *American Commercial Barge Line Co.*, 337 NLRB No. 168, slip op. at 3 (Aug. 1, 2002). I note, in particular, that the leads regularly are the highest authority representing the Employer's interests during the night shift because production supervisors are absent during that shift, the leads are paid 10% more than the highest paid operators, and they have unfettered discretion to approve work orders and commit the Employer's funds up to \$25,000.

The Employer contends that the leads have the authority to effectively recommend the hire or lay off of employees. Individuals who make effective recommendations to hire and exercise independent judgment in making those recommendations are supervisors within the meaning of Section 2(11). See, e.g., *Fred Meyer Alaska, Inc.*, 334 NLRB 646 (2001); *Queen Mary*, 317 NLRB 1303 (1995). In the instant case, the record shows that leads participate fully in the interview process and have made hiring recommendations that have been ultimately accepted. However, I cannot conclude on this record that the Employer has met its burden of proving that leads hire or make effective recommendations to hire.

¹³ Although I agree with the Petitioner that the leads do not exercise independent judgment in selecting which employees will work overtime because it is based on an established process, that issue is separate from whether leads have the authority to authorize overtime at all.

With respect to effectively recommending hiring, I note that it is undisputed that the field manager and operations manager retain final authority to hire a candidate. The Employer failed to elaborate in the record on the nature and extent of the field and operations managers' roles in hiring decisions. For instance, do the managers conduct additional interviews or background investigations on the candidates such as checking on and/or calling references? Such conduct on the managers' part would undermine any contention that the leads effectively recommend and/or that the recommendations are accepted without an independent investigation. In this case, the production supervisor at CPF-1 testified during direct examination that, after the team came to a consensus in favor of a candidate, an offer would be extended. That testimony suggests that there is no review and that the individuals with the ultimate hiring authority merely "rubber stamp" the team's decision. On cross-examination, however, the production supervisor at CPF-1 acknowledged that after the team's hiring recommendation has been sent to upper management, the field or operations manager could question him about the recommendation and ask for his personal opinion about the candidate. That testimony suggests that the field or operations manager do not merely "rubber stamp" the recommendation, but may conduct an independent investigation or evaluation of the candidate. For a recommendation to be effective, however, it must be implemented without further investigation or review. See, e.g., *Children's Farm Home*, 324 NLRB 61 (1997). As the record is conflicting and inconclusive on this point, I cannot find that the Employer has met its burden and, therefore, do not find that the leads hire or make effective hiring recommendations within the meaning of Section 2(11). See *Elmhurst Extended Care Facilities*, 329 NLRB 535, fn. 8 (1999) (any lack of evidence in the record is construed against the party asserting supervisory status); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

With respect to effectively recommending layoffs, I also find that the Employer has not shown that leads possess such authority. The record establishes that the management team comprised of the production supervisors, field manager, and operations manager has the final authority concerning which employees to lay off. Although the record shows that the management team accepted the leads' recommendation not to lay off anyone from CPF-1, the Employer failed to present any evidence to establish how the management team reached its decision. Thus, the record is unclear whether the team merely accepted the recommendation or conducted a further review once it received the recommendation. Consequently, I cannot conclude that the Employer has met its burden of proving that the leads possess authority to make effective layoff recommendations within the meaning of Section 2(11).¹⁴

Based on the record evidence and the above analysis, I conclude that the Employer's plant lead and drill site lead operators possess and exercise supervisory authority within the meaning of Section 2(11). In light of the parties' stipulation that the STP lead operators and camp utilities lead operators possess and exercise the same authority and that my conclusion regarding the plant leads and drill site leads is determinative with regard to the supervisory status of the STP lead operators and camp utilities lead operators, I further find that the STP lead operators and camp utilities lead operators are supervisors under the Act. Accordingly, I find that all four classifications should be excluded from the unit.

¹⁴ Similarly, the Employer's evidence regarding the responsible direction of employees is inconclusive. In particular, I note the lack of detail regarding the extent and nature of contact between the leads and operators. In short, the Employer offered general topics on which the leads may interact with operators in the latter's work area but nothing much beyond that is in the record. In view of the above and the record as a whole, I find that the leads do not responsibly direct employees within the meaning of Section 2(11) of the Act.

On the basis of the foregoing and the record as a whole, I shall direct that an election be held in the following appropriate unit.¹⁵ That unit is described as follows:

All production and maintenance employees employed by the Employer at its Kuparuk Oil Field located on the North Slope of Alaska, including all plant operators, drill site operators, seawater treatment plant operators, camp utility operators, maintenance technicians, lead maintenance technicians, instrument technicians, lead instrument technicians, electrical technicians, lead electrical technicians, mechanical technicians, lead mechanical technicians, and network service technicians; excluding all office clerical employees, plant lead operators, drill site lead operators, seawater treatment plant lead operators, camp utility lead operators, aides, production aides, facility engineers, production engineer supervisor, engineers (production), technician, central maintenance supervisors, engineers (maintenance), PM/MEL specialists, CMMS specialist, materials specialists, engineer/corrosion supervisors, engineers, technicians, field service supervisor, fleet analyst, field manager, operations manager-slope, operations manager-Anchorage, operations support manager, production supervisors, camps and materials supervisors, managerial employees, professional employees, guards and supervisors as defined in the Act.

There are approximately 161 employees in the unit.

D.) DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Paper, Allied Industrial, Chemical and Energy Workers International Union, Local 8-0369, AFL-CIO, CLC.

1.) List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior

¹⁵ The Unit description is in accordance with the stipulations agreed to by the parties at the hearing. Those stipulations are discussed above.

Underwear, 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Resident Officer for the Anchorage Resident Office within 7 days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Resident Office shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Anchorage Resident Office, 1007 W. Third Avenue, Suite 206, Anchorage, Alaska, on or before October 17, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (907) 271-3055. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

2.) Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

3.) Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C., by 5 p.m. EST on October 24, 2003. The request may not be filed by facsimile.

DATED at Seattle, Washington, this 10th day of October 2003.

Richard L. Ahearn, Regional Director
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